IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 30.11.2006

Manhori Vs. Nakli Ram alias Sukhbir & others

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. V.B. Aggarwal, Advocate,
for the appellant.

Virender Singh, J.

All the six respondents were booked in a complaint case filed by complainant/petitioner Manhori wife of Shri Ram Singh, under Section 302 read with Section 149 IPC for allegedly committing the murder of Ram Nath, her son.

The complainant in support of her case had examined Dr. Jitender Kumar PW1 who had conducted the postmortem examination on the dead body of Ram Nath on 20.11.2004, Mukesh Kumar (PW2), the photographer who had clicked the photographs of the dead-body at the place where it was found, Rishipal (PW3), the person before whom the accused had allegedly made extra-judicial confession and Smt. Manori, the complainant (PW4). After appreciating the entire evidence, the

learned trial Court acquitted all the respondents. Aggrieved by the same, the complainant has filed the instant appeal along with a Misc. Application bearing Crl. Misc. No.312-MA of 2006 for grant of special leave to appeal.

A Misc. Application bearing Crl. Misc. No.36662 of 2006 and Crl. Misc. No.74305 of 2006 have been filed under Section 482 of the Cr.P.C. seeking the exemption from filing the certified copy of Annexure P-1 dated May 9, 2005, passed by the Single Bench in Crl. Misc. No.8338-M of 2005 and exemption from filing certified copy of Annexure P-2.

We have heard Mr. V.B. Aggarwal, Advocate, learned counsel for the complainant-petitioner and with his assistance gone through the entire impugned judgment very minutely.

Mr. Aggarwal at the very outset submits that the State of Haryana has declined to file an appeal in the State case bearing FIR No.334 dated 20.11.2004 registered under Section 302 IPC as is clear from the certificate issued by Superintendent of Advocate General Haryana Annexure P-2, taken on record vide Crl. Misc. No.74305 of 2006.

A perusal of the impugned judgment reflects that the prosecution case is hinging upon the evidence of extra-judicial confession only which was allegedly made by the respondents to Rishipal and one Pardeep. Rishipal was produced as PW3. The learned trial

Court has disbelieved his statement while entering into a detailed discussion and returned a categoric finding that there was no reason for the accused to have made the said confession before him. We feel the necessity of reproducing the extract of the observation as contained in para 16 of the impugned judgment:-

> "The police had challaned Ravinder alone for the murder of Ram Nath and the police was not initiating any action against the remaining accused. The order of Hon'ble High Court on the petition of Gurdevi also did not go against the interest of the accused. The order, a copy of which is Ex.PD, reveals that after arguing for some time, counsel for the petitioner prayed for being permitted to withdraw the petition with liberty to the petitioner to avail alternative remedy available to her under the law. The petition was dismissed as withdrawn granting the liberty as prayed for. What was the alternative remedy available to Gurdevi was not stated before Hon'ble High Court by her counsel nor it is explained before me. Thus, there was no apprehension at all on the part of the accused other than Ravinder of the law taking on them for the death of Ram Nath. Ravinder on the other hand was in custody in connection of the murder of Ram Nath. This clearly shows that there was no reason for the accused to have made the confession to Rishi Pal.

The learned trial Court has found other flaws also in the statement of aforesaid Rishipal for disbelieving him.

Mr. Aggarwal contends that no doubt Rishipal (PW3) was a brother-in-law of Ram Nath, since deceased, but there was no reason for

him to depose falsely against the accused in view of the fact that Nakli Ram respondent and his family members were the labourers who were working in the field of Ram Nath, since deceased and, therefore, they had the impression that aforesaid Rishipal could get the matter solved. That appears to be the reason that they had reposed confidence in him. According to Mr. Aggarwal, the learned trial Court has disbelieved his statement without assigning cogent reasons whereas there was clear cut motive in the bosom of the respondents viz to commit the murder of deceased Ram Nath as Santosh, the mother of Ravinder accused, who is wife of Nakli Ram alias Sukhbir accused was having illicit relations with the deceased. This appears to be the reason that all the accused had conspired together in committing the murder of Ram Nath.

According to Mr. Aggarwal, if the extra-judicial confession allegedly made by the accused before aforesaid Rishipal is seen in the light of the aforesaid facts, the conviction can very well be maintained on the basis of extra-judicial confession alone.

We are not convinced with the arguments of Mr. Aggarwal. In a case resting upon circumstantial evidence, each plank of evidence produced by the prosecution should be a pointer towards the guilt of the accused. In the case in hand, there is only extra-judicial confession that too of a very weak character which, in our view, can not be made the basis of conviction.

After having scrutinized the entire case of the prosecution

minutely, we are of the considered view that the prosecution has not been able to prove the charge against the respondents beyond any shadow of reasonable doubt and, therefore, finding no flaw in the impugned judgment, we do not intend to take a different view than the one already taken by the learned trial Court.

Resultantly, finding no merit in the instant appeal, Criminal Misc. No.312-MA of 2006 is hereby dismissed.

(Virender Singh)
Judge

(A.N. Jindal),
Judge

November 30, 2006
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